the Act includes its "existing regulations."[46]

The Commission is not correct, however, in suggesting that BOC intraLATA information services are subject to the Computer III requirements, since the elimination of the Commission's structural separation requirements in that proceeding was vacated on appeal once[47] and again on appeal from the Computer III Remand Order.[48] Thus, the BOCs' intraLATA information services are now subject to the strict Computer II[49] structural separation rules that the Commission unsuccessfully attempted to eliminate in Computer III, and the Commission is once again addressing the issue of whether to eliminate those rules in the Computer III Further Remand Proceedings.[50] Pending resolution of that docket, the BOCs have been granted an interim waiver of the Computer II structural separation rules.[51]

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[46] BOC Out-of-Region Order at ¶ 29.

[47] California v. FCC, 905 F.2d 1217 (9th Cir. 1990).

[48] Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd. 7571 (1991), vacated and remanded sub nom., California v. FCC, 39 F.3d 919, 930 (9th Cir. 1994).

[49] Amendment of Section 64.702 of the Commission's Rules and Regulations, 77 FCC 2d 384 (1980)(Computer II Order), mod. on reconsideration, 84 FCC 2d 50 (1981), mod. on further reconsideration, 88 FCC 2d 512 (1981), aff'd sub nom. Computer and Communications Industry Ass'n. v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

[50] Notice of Proposed Rulemaking, 10 FCC Rcd. 8360 (1995).

[51] Bell Operating Companies Joint Petition for Waiver of Computer II Rules, 10 FCC Rcd. 13,758 (1995).

The BOCs' intraLATA information services will eventually be subject to whatever regime is ultimately established in the Computer III Further Remand Proceedings, whenever that docket becomes final. It may be useful, therefore, to fold that proceeding into this one, simply to ensure that the Commission ends up with an internally consistent regime for all information services, rather than a discontinuous regulatory scheme based on jurisdictional definitions that may lead to "gaming" the system. As a policy matter, the most logical resolution would be to bring the rules to be established in the Computer III Further Remand Proceedings into conformance with the Section 272 safeguards, especially since the governing Computer II structural separation rules are quite consistent with the Section 272 safeguards.

During the pendency of the interim waiver of the Computer II structural separation rules, the Commission is applying the Computer III and ONA nondiscrimination and other nonstructural safeguards to BOC information services. Unless and until the Commission decides to establish separation rules in the Computer III Further Remand Proceedings that are consistent with the Section 272 safeguards, all of the Computer III and ONA rules are clearly still necessary for intraLATA information services, especially to the extent that a BOC might wish to provide intraLATA information services on an unseparated basis while providing interLATA information services under the separate

affiliate and other requirements of Section 272.[52] At some point in the future, the local exchange competition that hopefully will result from the 1996 Act may render some aspects of the Commission's regulatory regime governing BOC enhanced services unnecessary, but that obviously has not happened yet and will not happen for the foreseeable future.[53]

F. Overlap Between InterLATA Information Services and Services Subject to Other Requirements

The last set of issues relating to the scope of Section 272 concerns the possible overlap between the category of interLATA information services and other requirements in the 1996 Act.[54] The NPRM seeks comment as to the types of information services that fall within the category of "electronic publishing" and are thus covered by the requirements of Section 274 of the Act and exempted from the requirements of Section 272.[55] Without providing a complete list of all such services at this time, the

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[52] Southwestern Bell, for example, has already indicated that it intends to offer some of its information services, such as its CallNotes voice messaging service, on an unseparated basis while offering interLATA information services through the separate affiliate required by Section 272. See Ex parte letter from Robert J. Gryzmala, Southwestern Bell Telephone Company, to William F. Caton, Acting Secretary, Federal Communications Commission, dated June 21, 1996, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20.

[53] See NPRM at ¶ 50.

[54] See NPRM at ¶¶ 51-54.

[55] See Section 272(a)(2)(C).

most obvious example is videotext services -- other than those specifically excepted from the category of electronic publishing[56] -- where the BOC controls, provides or has a financial interest in the content being transmitted.[57] It would make sense to adopt the AT&T Consent Decree approach of limiting the category of electronic publishing to the provision of information which the provider has originated, compiled or collected or in which it has a financial or proprietary interest.[58] If there is no connection between the carrier and the content of the information being transmitted, it is difficult to understand how the service could be either an information service or electronic publishing, since the carrier would simply be transmitting someone else's information.

The NPRM tentatively concludes that the category of "telemessaging services," as defined in Section 260(c), falls within the overall category of information services and is thus governed by the separate affiliate and other requirements of Section 272. That is clearly correct as to "voice mail and voice storage and retrieval services," but not so clear as to "live operator services used to record, transcribe, or relay messages (other than telecommunications relay services)." It is difficult to see how a live operator service, no matter what function that

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[56] See Section 274(h)(2).

[57] See Section 274(h)(1).

[58] See NPRM at ¶ 53.

service performs, can be considered "the offering of a capability for ... acquiring, storing ... or making available information via telecommunications,"[59] unless the term "telecommunications" is not limited to electronic transmission. Some notion of electronic transmission is instinct throughout the 1996 Act, whether or not it might be mentioned in a particular provision; otherwise, the Act would be rendered entirely meaningless.

IV. THE STRUCTURAL SEPARATION REQUIREMENTS OF SECTION 272

As a preliminary matter, the NPRM asks whether the requirements of Section 272 legally could, and, from the standpoint of good policy, should, be applied differently to the different categories of activities covered by Section 272 -- interLATA telecommunications services, certain interLATA information services and manufacturing.[60] MCI expresses no opinion at this time as to manufacturing, but, given the nature of information services and telecommunications services, the separation requirements of Section 272(b) should be applied in the same way to both categories of services. It may be appropriate to apply the nondiscrimination provisions of Section 272 slightly differently to the two categories of services, on account of their different configurations and other technical

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[59] See Section 153(20) of the Communications Act, containing the definition of the term "information service."

[60] See NPRM at ¶ 56.

factors, and those differences will be discussed where relevant.

A. Section 272(b)(1)

The first major issue presented in this portion of the NPRM is the proper interpretation of the requirement in Section 272(b)(1) that the interLATA affiliate "shall operate independently from the [BOC]." As the NPRM points out, a statute should be interpreted so as to give effect to each of its provisions.[61] Accordingly, "operate independently" must mean something other than, and in addition to, all of the requirements listed in Section 272(b)(2)-(5). MCI submits that the main requirement subsumed under "operate independently" is that the interLATA affiliate and the local exchange operations not jointly own or use any transmission or switching facilities or other property or share any physical space. This requirement emerges from the Computer I,[62] Computer II and Competitive Carrier separation precedents as well as the parallel requirement in Section 274.

First, in addressing "the relationship between the enhanced service subsidiary and the underlying [BOC]," the Computer II Order continued the Computer I "maximum separation" policy of

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[61] See NPRM at ¶ 57.

[62] Regulatory and Policy Problems Presented by the Interdependence of Computer & Communications Services & Facilities, 28 FCC 2d 267 (1971), aff'd in part sub nom. GTE Service Corp. v. FCC, 474 F.2d 724 (2d Cir. 1973), decision on remand, 40 FCC 2d 293 (1973).

prohibiting the subsidiary "from using in common any leased or owned physical space or property with an affiliated carrier on which is located transmission equipment or facilities used in the provision of basic transmission services," in order to prevent discriminatory access to basic transmission facilities and cost misallocation.[63] Computer II also prohibited the joint use or ownership of computer facilities.[64] "Translating" that requirement to the interLATA telecommunications service context requires that any joint use of switching facilities be prohibited. As with computer facilities in the enhanced service context, joint use of switching facilities would likely burden local exchange and access ratepayers, since "permitting the sharing of excess capacity would tend to generate that capacity."[65]

It is especially crucial that the physical separation aspect of the independent operation requirement be applied to the BOCs' "official services networks" -- the BOCs' internal interLATA networks used for communications among BOC personnel or equipment and communications between the BOCs and their customers.[66] Although these networks are interLATA, the BOCs persuaded the

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[63] Computer II Order, 77 FCC 2d at 477-78.

[64] Id. at 478-79.

[65] Id.

[66] Western Electric Co. v. United States, 569 F. Supp. 1057, 1098 (D.D.C. 1983).

AT&T Consent Decree Court that they should be given to the BOCs upon divestiture because the competitive rationale for divestiture "is wholly inapplicable to the provision of inter-LATA service by each Operating Company for its own internal official purposes."[67] These official networks therefore may not be used for interLATA services, which must be provided out of facilities entirely separate from those used for local exchange services. If extra capacity has been built into the official networks in preparation for interLATA service use, the BOCs have been engaged in cross-subsidization.

Although the Competitive Carrier separation requirements for LEC interexchange affiliates are "less stringent" than the Computer II rules,[68] they, too, prohibit an affiliate from jointly owning transmission or switching facilities with the local exchange operations as one of the conditions of non-dominant status.[69] Given the Commission's uniform practice of imposing physical separation on LEC and BOC affiliates in both the interLATA telecommunications service and interLATA information service markets, it must be concluded that such physical separation is necessary to implement the requirement that the interLATA affiliate operate independently from the BOC.

That conclusion is reinforced by the parallel requirement in

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[67] Id. at 1099.

[68] NPRM at ¶ 59.

[69] Fifth Report and Order, 98 FCC 2d at 1198.

Section 274(b) that a separated electronic publishing affiliate "be operated independently from" the BOC. Section 274(b) then goes on to state that "[s]uch separated affiliate ... and the [BOC] ... shall," followed by a list of requirements, including that they "own no property in common."[70] The listing of requirements in the same subsection (b) as the "operated independently" language, and in the sentence immediately following, compels the conclusion that the listed requirements amplify the "operated independently" language. Not only are all of the listed requirements subsumed under the same subsection that features the "operated independently" phrase, but they all also relate to factors that suggest independent operation. Since identical terms used in related parts of the same act should be interpreted to have the same meaning,[71] it must be concluded that the "operate independently" phrase in Section 272(b)(1) also precludes common ownership or joint use of any property, including all transmission and switching facilities.

Computer II and the Section 274(b) "operated independently" requirements similarly suggest additional elements of the "operate independently" requirement of Section 272(b)(1). The Computer II Order observed that "[i]ntimately related to issues concerning computer facilities are those dealing with software

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[70] Section 274(b)(5)(B).

[71] See Comm'r of Internal Revenue v. Lundy, 116 S.Ct. 647, 655 (1996).

development," and required that the LEC and its enhanced services affiliate "not perform software work for each other."[72] Along the same lines, Section 274(b)(7)(C) prohibits a BOC from performing research and development on behalf of its affiliate. Similarly, Section 274(b)(7) also prohibits a BOC from hiring or training personnel on behalf of its electronic publishing affiliate or purchasing, installing or maintaining equipment on behalf of such affiliate except for telephone service that it provides under tariff or contract subject to Section 274. Computer II also established similar restrictions.[73] These additional prohibitions round out the "operate independently" requirement of Section 272(b)(1).

B. Section 272(b)(3)

The NPRM next tentatively concludes that Section 272(b)(3), which requires that the BOC and its separate affiliate have separate officers, directors and employees, prohibits the sharing of any in-house administrative functions and seeks comment as to whether they may share any outside services.[74] Clearly, this provision establishes an absolute prohibition on any shared employees. Such a prohibition would be undermined if a BOC were allowed to provide services for the affiliate, on a reimbursable

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[72] Computer II Order, 77 FCC 2d at 479.

[73] Id. at 477.

[74] NPRM at ¶ 62.

basis, that would otherwise have been performed by the affiliate's own employees. In that situation, the affiliate and the BOC technically would not have any employees in common, but the affiliate might not have any employees. The only way to prevent such a subterfuge is to adopt the Commission's reading of the provision, under which a requirement of separate employees implies a prohibition of any in-house sharing of functions performed by employees. Since the language of Section 272(b)(3) is unqualified, there should be no exceptions for any in-house functions.

The requirement of separate employees would not necessarily be undermined in the same way if the BOC and its affiliate were to share outside services that are typically outsourced, such as insurance. In order to ensure that an outsourcing exception is not abused, it should apply only to those services and functions that the BOC outsourced prior to the date of passage of the 1996 Act. Any services that were performed formerly by the BOC in-house must also be performed in-house by the affiliate's own employees. Finally, any sharing of outside services by the BOC and its affiliate must be conducted pursuant to Section 272(b)(5), which requires that the separate affiliate "shall conduct all transactions with the [BOC] on an arm's length basis with any such transactions reduced to writing and available for public inspection."

C. Section 272(b)(4)

The Commission tentatively concludes that Section 272(b)(4), which forbids the separate affiliate from obtaining credit under any arrangement that would permit a creditor to have recourse to the BOC's assets, prohibits a BOC from co-signing a contract or any other instrument with a separate affiliate that would allow the affiliate to obtain credit in a manner that violates that provision.[75] Such a restriction on the BOC is clearly implied in Section 272(b)(4). This provision would also appear to prohibit a holding company from securing credit, whether through the issuance of bonds or otherwise, partly for the benefit of the separate affiliate in a manner that would allow a creditor to have recourse to the assets of the BOC.

D. Section 272(b)(5)

The final issue in this part of the NPRM seeks comment on the implementation of the "arm's length" requirement in Section 272(b)(5), discussed above.[76] For the most part, this provision, as a practical matter, supplements the nondiscrimination safeguards set forth in Sections 272(c) and (e). For example, Section 272(c)(1) forbids a BOC from discriminating in favor of its affiliate in the provision of services and facilities, inter alia, and Section 272(e)(2) prohibits a BOC from providing

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[75] See NPRM at ¶ 63.

[76] See NPRM at ¶ 64.

services and facilities, inter alia, to the affiliate unless such services or facilities are made available to other interexchange carriers (IXCs) on the same terms and conditions. The arm's length requirement of Section 272(b)(5) reinforces these other requrements by also requiring that services and facilities not be made available under seemingly neutral conditions that actually favor the affiliate, such as terms and conditions that can only be met by the affiliate. All such provision of facilities or services to the affiliate should be either under tariff or "reduced to writing and available for public inspection."

V. NONDISCRIMINATION SAFEGUARDS OF SECTION 272

This portion of the NPRM starts with a series of questions concerning the interplay of Section 272(c)(1) -- which prohibits a BOC from discriminating between its interLATA affiliate and other entities "in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards" -- and the more specific requirements contained in Section 272(e)(1)-(4), which do not "sunset" with the rest of Section 272.[77] Although the separate requirements of Section 272(c) and Section 272(e) might become important when Section 272(c) sunsets, they will both apply until then. Accordingly, in these comments, MCI will focus on their combined impact.

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[77] See Section 272(f), discussed in the NPRM at ¶ 66.

A. Functional Equality

The NPRM seeks comment on whether the nondiscrimination requirements of Section 272(c) and (e) could be interpreted to require that BOCs provide competitors with a quality of service or functional outcome identical to that provided to its affiliate, even if that required that the BOC actually provide facilities, services or information to a requesting party different from those provided to its affiliate. The NPRM states that a competitive information service provider or IXC might need BOC services or facilities somewhat different from those used by its affiliate because of differences in technical specifications or network architecture.[78]

Clearly, BOCs should be required to provide such functional equality, irrespective of any technical differences from the services or facilities provided to their affiliates. If the BOC is truly separate and operating completely independently from its interLATA affiliate, there is no reason that the affiliate would need facilities or services technically different from the facilities or services needed by other separate interLATA service providers. Thus, where another entity requests BOC facilities, services, information or standards different in any way from those needed by the BOC's affiliate in order to receive the same quality of service or functional outcome, the presumption should be that the specifications requested by the unaffiliated entity

[78] See NPRM at ¶ 67.

are the appropriate ones for a truly separate and independent interLATA service provider and that the different specifications needed by the BOC's affiliate reflect a lack of the proper physical and operational separation.

The enhanced service context provides a useful illustration of this problem. Computer III required that BOCs provide information service providers with the same unbundled network elements that were used by the BOCs' own information service operations and under all of the CEI standards discussed above. In the infamous MemoryCall case, the Georgia PSC found that BellSouth had provided its own MemoryCall voice mail service with a form of interconnection that competing voice mail providers could not use because BellSouth's end offices were not engineered to allow such interconnections for others. The PSC accordingly found that BellSouth had discriminated against competing providers.[79] The MemoryCall case is an excellent example not only of the failure of CEI/ONA, but also of the inadequacies of technical equality requirements.

It is worth noting in this regard that in the First Interconnection Order, the Commission adopted a similar functional equality standard in implementing the "equal in quality" interconnection standard of Section 251(c)(2)(C). Where a carrier requests interconnection "of superior or lesser quality

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[79] See Investigation into Southern Bell Telephone & Telegraph Co.'s Provision of MemoryCall Service, Docket No. 4000-U (Ga. PSC June 4, 1991).

than an incumbent LEC currently provides, the incumbent LEC is obligated to provide the requested interconnection arrangement if technically feasible." The Commission explained that "[r]equiring incumbent LECs to provide upon request higher quality interconnection than they provide themselves, subsidiaries, or affiliates will permit new entrants to compete with incumbent LECs by offering novel services that require superior interconnection quality."[80] The same approach should be followed in implementing the requirements of Section 272(c) and (e).

Similarly, where a BOC simply has not offered to anyone -- either its affiliate or others -- a particular service or facilities needed by competitive service providers, there should be a presumption that such withholding is discriminatory. MCI has recited in great detail instances where the BOCs have decided to do without a particular feature in order to deny it to others.[81] Such "scorched earth" tactics must not be condoned by a lax interpretation of what constitutes discrimination under Section 272(c)(1).

B. The Applicability of Pre-Existing Nondiscrimination Requirements

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[80] First Interconnection Order at ¶ 225.

[81] See Affidavits of Peter P. Guggina, James D. Joerger, David P. Jordan and Anthony J. Toubassi, attached to Comments of MCI Telecommunications Corporation, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (filed May 20, 1996).

On a related matter, the NPRM also seeks comment on the interrelationship of the unbundling requirements of Section 251, the nondiscrimination requirements of Section 272 and the current Computer III and ONA requirements.[82] Generally, the nondiscrimination requirements of Section 272(c) and Section 272(e)(1) cover both telecommunications and information services. The unbundling requirements of Section 251 appear to cover only carriers, and the Computer III and ONA rules cover only information services. The content of each of these sets of rules will be discussed below.

The NPRM also discusses the relationship of Section 202(a) of the Act, which prohibits "any unjust or unreasonable discrimination" and "any unreasonable preference or advantage," to the nondiscrimination requirements of Section 272.[83] Since the latter are unqualified by any adjectives such as "unjust" or "unreasonable," they ought to be given a stricter interpretation, just as the Commission found in the First Interconnection Order that the similarly unqualified nondiscrimination requirement in Section 251(c)(2) reflects "a more stringent standard" than Section 202(a).[84]

Thus, for example, differences in cost to a BOC would not

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[82] See NPRM at ¶ 68.

[83] See id. at ¶ 69.

[84] First Interconnection Order at ¶ 217.

appear to be relevant in assessing whether it must offer IXCs the same facilities and services on the same terms and conditions as it offers its affiliate. The principle of statutory construction discussed above, that a statute must be interpreted so as not to render any provision superfluous or redundant, also compels a reading of the nondiscrimination provisions of Section 272 as imposing requirements on a BOC's dealings with its interLATA affiliate more stringent than those already in place generally for all carriers pursuant to Section 202(a).

The NPRM tentatively concludes that any transfer by a BOC of existing network capabilities of its local exchange entity to an interLATA affiliate is prohibited by Section 272(a), which requires a BOC affiliate that is a LEC subject to Section 251(c) to be separate from the Section 272(a) affiliates required for the provision of competitive activities.[85] It seems clear that any avoidance of statutory obligations through intracorporate transfers must be prevented, either by directly prohibiting any such transfer of a BOC's local exchange operations or by imposing all of the relevant requirements of the 1996 Act, including Sections 251(c), 272(c) and 272(e), on any BOC entity in which the local exchange operations reside. The latter approach would also be consistent with Section 153(4)(B), which states that the definition of a BOC includes "any successor or assign of any such company that provides wireline telephone exchange service."

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[85] See NPRM at ¶ 70. See also, id. at ¶ 79.

Whichever approach is adopted, the Commission must ensure that the 1996 Act is not undermined by intracorporate shell games.

C. Section 272(c)(1)

The NPRM next focuses on the substance of Section 272(c)(1) and tentatively concludes that the BOCs must treat all other entities in the same manner as they treat their affiliates and must provide and procure services, facilities and information to and from those other entities under the same terms, conditions and rates.[86] That paraphrasing of Section 272(c)(1) seems unassailable. The more difficult question is how to bring about such equality.

As discussed above, it will sometimes be necessary for a BOC to provide somewhat different facilities, services or functions to another entity from those that it provides to its own interLATA affiliate in order to provide functional equality or service of equal quality. Such differences should not be considered to violate Section 272(c)(1), since they do not "discriminate" but, rather, bring about meaningful equality. Unless, however, differences between the services, facilities or functions provided to the interLATA affiliate and those provided to others are necessary for the unaffiliated entity's benefit, by providing functional equality or service of equal quality, such differences should be considered discrimination in violation of

[86] See NPRM at ¶ 73.

Section 272(c)(1).

Related to the functional equality principle is another necessary correlate of nondiscrimination, namely, that any services, facilities or information provided by the BOCs be useful to unaffiliated entities in order to satisfy Section 272(c)(1). Thus, if a BOC provides services, facilities or information to its affiliate that are not useful to others, such provision should be presumed to be discriminatory. An affiliate's use of over 90 percent of a particular BOC service or facility capacity should be considered prima facie evidence that such service or facility is not useful to others.

In this connection, the NPRM seeks comment as to the adequacy of the Computer III and ONA nondiscrimination rules to enforce Section 272(c)(1).[87] They require nondiscriminatory access to unbundled network services and to the same quality of service installation and maintenance as enjoyed by the BOCs' own enhanced services operations, notification of changes in the network and new network services and reporting on the quality and timeliness of installation and mainenance.[88] As discussed above in connection with incidental interLATA services, those rules are certainly necessary but not sufficient by themselves. In fact, it is the industry's (and the Commission's) "disappointment" with

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[87] See id. at ¶ 75.

[88] See Computer III Remand Order, 6 FCC Rcd. at 7597-7604.

CEI/ONA,[89] caused by such experiences as the MemoryCall case, that necessitates the equal functional outcome rule discussed above. Along the same lines, for the reasons stated in Part III, supra, an additional element of network unbundling that will be necessary to bring about nondiscriminatory access to network facilities is access to subloop elements.

The NPRM also seeks comment on the relationship, if any, of Section 222, addressing customer proprietary network information (CPNI), to the requirement in Section 272(c)(1) to provide information on a nondiscriminatory basis. Section 222 restricts the disclosure or unapproved use of customers' or other carriers' proprietary information for both competitive equity and privacy reasons. Although Section 222 establishes a fairly detailed information disclosure regime, Section 272(c)(1) should still be applied to CPNI to ensure that BOCs do not impose more demanding requirements on unaffiliated entities than they do on their own affiliates. For example, assuming that the Commission determines in the CPNI proceeding[90] that either oral or written customer authorization suffices under Section 222(c)(2) to disclose CPNI to another entity, a BOC should not be allowed to require only oral authorization to disclose CPNI to its affiliate while requiring written authorization to disclose to others.

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[89] BOC ONA Amendment Order, 5 FCC Rcd. at 3116.

[90] Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115.

This portion of the NPRM also seeks comment as to the regulations necessary to implement nondiscrimination "in the establishment of standards." The standards covered by this aspect of Section 272(c)(1) should include any that affect interconnection and interoperability between two or more public network operators. The Commission should require that all such technical standards involving the BOCs or their affiliates be developed only in open, nondiscriminatory, public standards-setting bodies and fora that have open process rules and that the Commission will not recognize standards not established in such manner for purposes of resolving disputes over claimed discrimination in setting standards. Accordingly, the Commission should not recognize or acknowledge as nondiscriminatory standards those specifications developed in a closed, non-public, and/or proprietary process, such as Bellcore Technical and Generic Requirements.[91]

The Commission should also require that the BOCs participate in all public fora and committees that are developing interconnection or interoperability standards covering or affecting any of their current or foreseeable services. Issues that cross multiple fora should be directed and coordinated through a single forum such as the Network Interconnection and

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[91] It might be appropriate in a standard to refer to a specification developed in a closed forum for informational or descriptive purposes, but not as part of the requirements of the standard.

Interoperability Forum (NIIF). "Forum shopping," the practice of attempting to work, in one forum, issues previously rejected by another, should be strongly discouraged, and instances of forum shopping should be dealt with by the Commission or a Commission-appointed committee, such as the NIIF. Because so many companies will be entering multiple lines of business, industry technical fora should be required to adopt rules prohibiting discrimination by industry segment, lines of business or technology, thus ensuring that minority interests are protected.

Most importantly, as explained in affidavits submitted by Peter P. Guggina, MCI's Director of Technical Standards Management, et al., in the Interconnection proceeding, the types of procedural rules MCI is proposing here cannot adequately curb the BOCs' dominance of industry technical fora and committees. Nor can any rules force the resolution of an issue that the BOCs want to delay or avoid.[92] Accordingly, it is crucial that the Commission act as or appoint an arbitrator to resolve disputes that arise in the public standards-setting process.[93] Otherwise, the nondiscrimination safeguards promised in this proceeding will never be complete.

D. Section 272(e)

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[92] See affidavits attached to MCI Interconnection Comments (May 20, 1996).

[93] Such arbitration would be separate from the enforcement processes discussed in Part VII, infra.

The NPRM next turns to Section 272(e) and seeks comment as to the effect that sunset of the separate affiliate requirement will have on those subsections of Section 272(e) that relate to BOC dealings with their affiliates.[94] Technically, since Section 272(e) does not sunset, those subsections that refer to the affiliates do not sunset with the separate affiliate requirement. For example, even after the affiliate requirement sunsets, a BOC still might choose to provide interLATA services through a separate affiliate, and the provisions of Section 272(e) that refer to such affiliates would still be relevant and effective. At this point, however, it is premature to decide what the effect of Section 272 sunset will be on subsection (e) issues, especially since the separation requirements can be extended beyond the initial three years.

The NPRM next addresses Section 272(e)(1), which requires a BOC to fulfill any requests from an unaffiliated entity for exchange and exchange access service within a period no longer than the period in which it provides such service to itself or its affiliates.[95] This provision should cover initial installation requests as well as any subsequent requests for improvement, upgrades or modifications of service or repair and maintenance of these services. Requests for service and provision of service must be deemed to include any changes in

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[94] See NPRM at ¶ 80.

[95] See NPRM at ¶¶ 81-85.

service as well as repair and maintenance, since all of these aspects of service are absolutely necessary for proper service. Regular reporting requirements for all of these aspects of service, following the format of the Computer III and ONA installation and maintenance service interval reporting requirements, should be imposed to ensure compliance with this provision.[96]

The NPRM seeks comment on the interpretation of Section 272(e)(2), which states that a BOC may not provide any services, facilities or information concerning its provision of access to an interLATA affiliate unless they are made available to other providers of interLATA services in that market on the same terms and conditions.[97] MCI views this provision as essentially a more specific application of Section 272(c)(1) to the interLATA service market. MCI's comments as to Section 272(c)(1) above also pertain to this subsection of Section 272(e).[98] As the NPRM points out, this provision is much like the AT&T Consent Decree requirement that the BOCs provide access services to AT&T and competing interLATA and information service providers that were

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[96] See BOC ONA Reconsideration Order, 5 FCC Rcd. at 3093.

[97] See NPRM at ¶¶ 86-87.

[98] Similarly, Section 272(e)(4) is a more specific application of the nondiscrimination concepts discussed above in connection with Section 272(c)(1), and that discussion applies to Section 272(e)(4) as well. See NPRM at ¶ 89.